

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “**Bidding Procedures**”) with respect to the sale (the “**Sale**”) by Gramercy Park Land, LLC (“**Gramercy**” or the “**Seller**”), as Chapter 11 debtor and debtor in possession (the “**Debtor**”) of the real estate known as Premises A: 276-280 Third Avenue, New York, New York, inclusive of all Air Rights and other Development Rights appurtenant to the 276 Third Parcel (collectively, the “Development Parcels”), and the Development Rights appurtenant to 266 Third Avenue, 272 Third Avenue, 274 Third Avenue and 158 East 22nd Street, New York, New York (the “266/272/274/158 Development Rights”) to Alchemy Gramercy LLC (“**Alchemy**” or the “**Purchaser**”) pursuant to a purchase and sale agreement (the “**Purchase Agreement**”) and the Sale by LT 266 THIRD AVENUE, LLC, and NK 266 THIRD AVENUE, LLC (“LTNK”) of the real property known as 266-270 Third Avenue, New York, New York, Premises B:, either pursuant to the highest bidder or pursuant to a contract of sale to be entered into between the Debtors and Alchemy. The transaction contemplated by the Purchase Agreement or Agreements are subject to competitive bidding as set forth herein and approval of the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) pursuant to the Debtors’ plans of reorganization and sections 363 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), and the Debtors are soliciting other higher or otherwise better bids for the Sale of the Real Estate. Each premises shall be auctioned separately and then a second auction shall occur where both Premises A and Premises B shall be auctioned collectively. Whichever sale, whether separately or collectively, shall bring in the highest total bid, then that method of sale shall be used.

1. Important Dates

Qualified Bid Deadline

Objection Deadline

Final Bid Deadline

**Announcement of Successful Bid and
Backup Bid**

**Limited Objection Deadline for
Objections to Successful Bidder and
Backup Bidder Only**

Sale Hearing

2. Assets to be Sold Free and Clear

As described in greater detail in the Purchase Agreement, the Debtors are offering for sale Sellers’ right, title, and interest in (i) that certain real property together with the

buildings and improvements thereon located at Premises A: 276-280 Third Avenue, New York, New York inclusive of all Air Rights and other Development Rights appurtenant to the 266 Third Parcel and the 276 Third Parcel (collectively, the “Development Parcels”), and the Development Rights appurtenant to 266 Third Avenue, 272 Third Avenue, 274 Third Avenue and 158 East 22nd Street, New York, New York, (the “266/272/274/158 Development Rights”) and Premises B: 266-270 Third Avenue, New York, New York, , (collectively, the “**Real Estate**”).

Seller previously entered into certain agreements dated March 27, 2008 (the “Existing Air Rights Agreements”) for the purchase of the Inclusionary Air Rights from East 46th Street Development Company which consist of a total of 21,335 square feet (14,935 square feet and 6,400 square feet appurtenant to the parcel known as 228 East 46th Street, New York, N.Y.) of Inclusionary Air Rights. Seller hereby advises any Purchaser that the Existing Air Rights Agreements have terminated pursuant to their terms by reason of Seller’s default thereunder and that Seller can no longer represent to Purchaser that it will be able to acquire the Inclusionary Air Rights or assign the Existing Air Rights Agreements to Purchaser and Purchaser shall acknowledge same.

3. **Stalking Horse**

The Purchase Agreement provides that the Purchaser shall act as the “stalking horse bidder” in the Auction (defined below) for Parcel A, and at its election, for Parcel B, and for breakup fee in the amount of 3% of the Purchase Price (the “**Break-Up Fee**”), which amount includes reimbursement of actual, reasonable, out-of-pocket third party expenses not to exceed \$100,000 (the “**Expense Reimbursement**”). For the purposes of these Bidding Procedures, the term “**Auction**” shall refer to the solicitation of higher or otherwise better bids for the Real Estate in accordance with the Bidding Procedures provided herein. The Break-Up Fee which shall be payable by the Seller in cash immediately upon the consummation of an alternative transaction as the “highest or otherwise best” offer and from the first cash proceeds of such sale, provided, however, that the Purchaser shall not be in default of the Purchase Agreement and is otherwise ready, willing, and able to close.

4. **Mailing the Auction and Hearing Notice**

On a date no later than three business days following entry by the Bankruptcy Court of the order (the “**Bidding Procedures Order**”) granting the Debtors’ motion (the “**Motion**”)¹ for an order approving the Bidding Procedures, the Debtors shall mail the notice of sale (the “**Auction and Hearing Notice**”) in the form approved by the Bankruptcy Court in the Bidding Procedures Order by (i) first class mail, postage prepaid and (ii) the Debtors’ counsel shall email the Auction and Hearing Notice to all potential purchasers identified by the Debtors or their agents.

¹ Capitalized terms but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Any other party in interest that wishes to receive a copy of the Sale Motion shall make such request in writing to The Law Offices of Avrum J. Rosen, PLLC, 38 New Street, Huntington, New York 11743, Attn: Avrum J. Rosen, Esq., Telephone: (631) 423-8527, Email: ajrlaw@aol.com. Additionally, copies of these documents may be downloaded from the Courts' docket at <http://nysb.uscourts.gov>.

5. **Confidentiality Agreement / Due Diligence**

The Debtor will afford interested parties the opportunity to conduct reasonable due diligence in the manner determined by the Debtor in its discretion, in consultation with the Secured Creditor Stabfund (USA) Inc. and its attorneys Proskauer Rose LLP and Secured Creditor Vasos, LLC and its attorney Gregory Messer, Esq.. The Debtor agrees, within its sole discretion in consultation with the Secured Creditor(s), to furnish any due diligence information after the Qualified Bid Deadline (defined below).

Parties interested in conducting due diligence should contact

Any entity that wishes to conduct due diligence with respect to the Real Estate, other than the Purchaser, must deliver to (i) the Debtor's counsel The Law Offices of Avrum J. Rosen, PLLC, 38 New Street, Huntington, New York 11743, Attn: Avrum J. Rosen, the following: (a) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor and (b) at the Debtor's discretion, the Debtor may require a written and non-binding statement of interest demonstrating to the Debtor's satisfaction a bona fide interest to purchase the Real Estate, that includes a potential purchase price range which low end must be more than \$_____ in excess of the "stalking horse bid," the proposed structure and financing, if any, of the transaction, any conditions to closing that such entity may wish to impose, and the nature and extent of and time necessary for due diligence such entity may wish to conduct.

Parties delivering such a confidentiality agreement and letter of intent may be deemed by the Debtor, to be reasonably likely to be able to fund the consummation of its proposed transaction, if selected as the Successful Bidder (as defined below), not later than _____ (such person or entity, a "**Potential Bidder**"). After compliance with the foregoing, the Debtor may allow Potential Bidders to conduct due diligence with respect to the Real Estate.

6. **Qualification of Bids and Bidders**

In order to participate in the bidding process and to have a bid considered by the Debtor, each Potential Bidder must deliver a written offer or group of offers satisfying the below criteria. A "**Qualified Bidder**" is a Potential Bidder that delivers a binding bid that in the Debtor's discretion after consultation with the Secured Creditor(s) satisfies the following (a "**Qualified Bid**"):

- (a) **Qualified Bid Deadline.** Each bid package must be delivered in written and electronic form to: (i) The Law Offices of Avrum J. Rosen, PLLC, Attn: Avrum Rosen,

Esq., 38 New Street, Huntington, New York 11743 (ii) Proskauer Rose, LLP, Eleven Times Square, New York, New York 10036, Attn: Jeffrey W. Levitan and Adam Berkowitz, and (iii) Gregory Messer, Esq., 26 Court Street, Suite 2400, Brooklyn, NY 11242, (collectively, the “**Notice Parties**”), so as to **actually be received no later than at 4:00 p.m. (prevailing Eastern Time)** (the “**Qualified Bid Deadline**”).

- (b) **Qualifying Bid Package.** Each bid must include (collectively, the “**Qualifying Bid Package**”): (i) a written and signed irrevocable offer stating that (x) the bidder offers to consummate a sale transaction on terms and conditions no less favorable than found in the Purchase Agreement, (y) confirming that the bid will remain irrevocable until one business day following the closing of a Sale to the Successful Bidder (as defined below); (ii) an executed copy of the Purchase Agreement as modified by the bidder in accordance with its bid (the “**Modified Purchase Agreement**”); and (iii) an electronic markup of the Purchase Agreement showing the revisions in the Modified Purchase Agreement; and (iv) a CD-ROM containing a clean copy of the Modified Purchase Agreement (formatted as a Microsoft Word document or such other word processing format acceptable to the Debtor) and the electronic markup of the Purchase Agreement. The Debtor shall, in consultation with Secured Creditor(s), determine whether any Modified Purchase Agreement that modifies the Purchase Agreement in any respect beyond the identity of the purchaser and the purchase price under the Purchase Agreement is a Qualified Bid. The determination that a bid is a Qualified Bid does not guarantee that the Qualified Bidder will be invited to submit an Improved Bid (defined below), it being the intent of the Debtor to invite only a limited number of Qualified Bidders to submit Improved Bids under the circumstances outlined in the following section 7 below. For the avoidance of doubt, the Purchaser is hereby automatically invited to submit an Improved Bid in advance of the Final Bid Deadline.
- (c) **Minimum Bid.** The amount of the purchase price in such bid must provide for net cash (or cash equivalent) that is \$_____ more than the purchase price contained in the Purchase Agreement plus the amount of the Break-Up Fee and reimbursement of Expense Reimbursement payable to Purchaser (the “**Minimum Bid**”).

- (d) Financial Information. The Bid Package must contain such financial and other information that will allow the Debtor, in consultation with the Secured Creditor(s), to make a determination as to the bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Purchase Agreement, including adequate assurance of such bidder's ability to perform under any Assumed Contracts and Leases (defined below) and to pay all cure amounts required to assume and assign any such Assumed Contracts and Leases.
- (e) Regulatory Approvals. The Bid Package must provide evidence of the bidder's ability to obtain all necessary regulatory approvals, if applicable.
- (f) Executory Contracts and Unexpired Leases. The Modified Purchase Agreement must identify with particularity each and every executory contract and unexpired lease, the assumption and assignment of which will be a condition to closing the transaction contemplated by the Modified Purchase Agreement (collectively, the "Assumed Contracts and Leases").
- (g) Additional Bid Protections. The bid must not request or entitle the Potential Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment.
- (h) Identity of Bidders. Each Potential Bidder must fully disclose the identity of each entity that will be bidding for the Real Estate or otherwise participating in connection with such bid, and the complete terms of any such participation, as well as disclose the organization form and the business conducted by each entity.
- (i) Due Diligence. The bid must not contain any due diligence or financing contingencies of any kind, and must affirmatively acknowledge that the bidder (i) had an opportunity to conduct due diligence regarding the Real Estate prior to making its offer and does not require further due diligence, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Estate in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Real Estate, or the completeness of any information provided in connection therewith.

- (j) Consents. Each Potential Bidder must represent that it obtained all necessary organizational approvals to make its competing bid and to enter into and perform the Modified Purchase Agreement and include evidence of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Modified Purchase Agreement.
- (k) Deposit. Only Qualified Bidders invited to submit Improved Bids shall be required to deposit 5% of the purchase price set forth in the Modified Purchase Agreement with an escrow agent selected by the Debtor (the "Deposit Agent") in the form of a certified check or wire transfer (the "Deposit") by the later of (x) two business days following notification by the Debtor that the bidder is invited to submit an Improved Bid or (y) _____. The Qualified Bidder shall forfeit the Deposit if (i) the bidder withdraws or modifies its bid other than as provided herein before the Bankruptcy Court approves the Debtor's selection of the Successful Bidder, or (ii) the bidder is the Successful Bidder (defined below) and (x) modifies or withdraws the bid without the Debtor's consent before the consummation of the sale contemplated by the bid, or (y) breaches the Modified Purchase Agreement. The Deposit shall be returned to the bidder no later than five business days after entry of the Sale Order if the bidder (who has not otherwise forfeited its Deposit) is not the Successful Bidder or the Backup Bidder (defined below). The Debtor will not be required to maintain any Deposit in an interest bearing account, but any interest earned on any Deposit will be remitted to the appropriate bidder if the Deposit is returned pursuant to the above.

The Debtors shall have the exclusive right, in their discretion (after consultation with the Secured Creditor(s)), to determine whether a bid is a Qualified Bid and whether any such Qualified Bidder shall be invited to submit an Improved Bid in advance of the Final Bid Deadline. On or before _____, the Debtor shall notify bidders (i) whether their bids have been determined to be Qualified Bids, (ii) whether they are invited to submit Improved Bids, and (iii) to submit Improved Bids pursuant to the procedures described below if they are invited to submit Improved Bids. In addition to the requirements above, the Debtor may, in its sole and absolute discretion, in consultation with the Secured Creditors(), request any additional information from any bidder to assist them in making their determination as to whether a bid is a Qualified Bid. For the avoidance of doubt, Purchaser is a Qualified Bidder, the Purchase Agreement is a Qualified Bid and Purchaser and the Secured Creditors) (provided they submit a

Qualified Bid) shall be automatically invited to submit Improved Bids in advance of the Final Bid Deadline.

7. **Improved Bids**

In the event that the Debtor timely receives at least one, but less than eight, Qualified Bids in addition to the bid submitted by the Purchaser, the Debtor shall invite each Qualified Bidder to submit an Improved Bid. In the event, however, that the Debtor timely receive eight or more Qualified Bids in addition to the bid submitted by the Purchaser, the Debtor shall invite only the Qualified Bidders submitting the eight highest or otherwise best Qualified Bids (which number may be increased or decreased in the Debtor's discretion after consultation with the Secured Creditor(s)) to submit an Improved Bid. An "**Improved Bid**" shall be submitted in accordance with the following:²

- (a) **Improved Bid Package.** Each Improved Bid must include (collectively, the "**Improved Bid Package**"): (i) a written and signed irrevocable offer stating that (x) the bidder offers to consummate a sale transaction on terms and conditions no less favorable than found in the Improved Purchase Agreement, (y) confirming that the bid will remain irrevocable until one business day following the closing of a Sale to the Successful Bidder (as defined below); (ii) a new Modified Purchase Agreement; and (iii) an electronic markup of the bidder's prior Modified Purchase Agreement showing the revisions in the new Modified Purchase Agreement; and (iv) a CD-ROM containing a clean copy of the new Modified Purchase Agreement (formatted as a Microsoft Word document or such other word processing format acceptable to the Debtor) and the electronic markup of the prior Modified Purchase Agreement.
- (b) **Final Bid Deadline.** Improved Bid Packages must be delivered in written and electronic form to the Notice Parties so as to **actually be received no later than at 10:00 a.m. (prevailing Eastern Time)** (the "**Final Bid Deadline**").
- (c) **Minimum Improved Bid.** The amount determined by the Debtor in consultation with the Secured Creditors, which amount shall not be less than \$_____ more than the purchase price contained in the highest or otherwise best Qualified Bid submitted prior to the Final bid Deadline plus

² For the avoidance of doubt, the Debtors in consultation with the Secured Creditors may permit bidders to submit multiple Improved Bids and may waive or modify any of the requirements for the submission of Improved Bids set forth in this section.

the amount of the Break-Up Fee and reimbursement of Expense Reimbursement payable to Purchaser (the "**Minimum Improved Bid**").

- (d) **Financial Information.** Except as to the Purchaser, the Improved Bid Package must contain such financial and other information that will allow the Debtor to make a determination as to the bidder's financial and other capabilities to consummate the transactions contemplated by the new Modified Purchase Agreement on or before _____, including adequate assurance of such bidder's ability to perform under any Assumed Contracts and Leases (defined below) and to pay all cure amounts required to assume and assign any such Assumed Contracts and Leases.
- (e) **Regulatory Approvals.** Except as to the Purchaser, the Improved Bid Package must provide evidence of the bidder's ability to obtain all necessary regulatory approvals, if applicable.
- (f) **Additional Bid Protections.** Except as to the Purchaser, the Improved Bid must not request or entitle the bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment.
- (g) **Identity of Bidders.** Each bidder submitting an Improved Bid must fully disclose the identity of each entity that will be bidding for the Real Estate or otherwise participating in connection with such bid, and the complete terms of any such participation, as well as disclose the organization form and the business conducted by each entity.
- (h) **Due Diligence.** Improved Bids must not contain any due diligence or financing contingencies of any kind, and must affirmatively acknowledge that the bidder (i) had an opportunity to conduct due diligence regarding the Real Estate prior to making its offer and does not require further due diligence, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Estate in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Real Estate, or the completeness of any information provided in connection therewith.

- (i) Consents. Except as to the Purchaser, each bidder submitting an Improved Bid must represent that it obtained all necessary organizational approvals to make its competing bid and to enter into and perform the new Modified Purchase Agreement and include evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the new Modified Purchase Agreement.
- (j) Timing of Closing. Improved Bids must contain a closing date on or before _____ and a provision confirming that **TIME IS OF THE ESSENCE** as to the bidder's obligation to close on or before _____.

8. **As Is, Where Is**

The sale of any or all of the Real Estate shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtor, except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court.

9. **Successful Bid**

On or before _____, the Debtor shall determine, in their discretion after consultation with the Secured Creditor(s) and subject to Court approval, the highest or otherwise best Improved Bid or bids, if the Premises are sold separately, submitted (the "**Successful Bid**"). The bidder submitting such Successful Bid shall become the "**Successful Bidder**," and shall have such rights and responsibilities of the purchaser, as set forth in the applicable Modified Purchase Agreement or the Purchase Agreement. The Debtor will announce the Successful Bidder in a filing with the Court which shall include a copy of the applicable Modified Purchase Agreement or the Purchase Agreement. Within one business day after being notified by the Debtor that it has submitted the highest or otherwise best bid, (but in any event prior to the commencement of the Sale Hearing), the Successful Bidder shall (i) complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made, and (ii) supplement its Deposit by wire transfer or other immediately available funds so that, to the extent necessary, such deposit equals 5% of the Successful Bid.

10. **Backup Bid**

At the same time the Debtor announces the Successful Bid, the Debtor will also announce the second highest or otherwise best bid submitted (the "**Backup Bid**"). The bidder submitting such Backup Bid shall become the "**Backup Bidder**," and shall have such rights and responsibilities of the purchaser, as set forth in the applicable Modified Purchase Agreement or the Purchase Agreement. The Debtor shall announce the Backup Bidder in a filing with the Court. Within one business day after being notified by the

Debtor that it has submitted the second highest or otherwise best bid, the Backup Bidder shall (i) complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Backup Bid was made, and (ii) supplement its Deposit by wire transfer or other immediately available funds so that, to the extent necessary, such deposit equals 5% of the Backup Bid. In the event the Backup Bidder fails to comply with the requirements of this paragraph, it will be deemed to have forfeited its Deposit. The Backup Bidder's Deposit will be returned by the Debtor upon consummation of the Sale of the Assets to the Successful Bidder, but in no event shall the Backup Bidder be required to keep its deposit posted beyond _____.

11. **Sale Hearing**

The Successful Bid and the Backup Bid will be subject to approval by entry of an order (the "**Sale Order**") by the Bankruptcy Court after a hearing (the "**Sale Hearing**") that will take place on _____ at ____:00 a.m. (prevailing Eastern Time). The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court. Upon approval of the Backup Bid by the Bankruptcy Court, the Backup Bid shall remain open and irrevocable until the consummation of the Successful Bid, but in no event shall the Backup Bidder be required to keep its Backup Bid open past _____.

Objections, if any, to the Sale Motion (other than objections with respect to cure amounts or adequate assurance of future performance under the Assumed Contracts and Leases, which are subject to the Assignment Procedures) and any filed supplements thereto, shall: (i) be in writing; (ii) specify with particularity the basis of the objection; and (iii) be filed with the Court and simultaneously served on: (a) Debtor's counsel, The Law Offices of Avrum J. Rose, PLLC, Attn: Avrum Rosen, Esq., 38 New Street, Huntington, New York 11743 (b) Proskauer Rose, LLP, Eleven Times Square, New York, New York 10036, Attn: Jeffrey W. Levitan and Adam Berkowitz, and (c) Gregory Messer, Esq., 26 Court Street, Suite 2400, Brooklyn, NY 11242; and (d) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004; (e) the Successful Bidder, and (f) the Backup Bidder, so as to be **actually received by 4:00 p.m. (prevailing Eastern Time) on** _____ (the "**Objection Deadline**"). Objections, if any, with respect to the selection of the Successful Bidder and the Backup Bidder only shall: (i) be in writing; (ii) specify with particularity the basis of the objection; and (iii) be filed with the Court and simultaneously served on: (a) Debtor's counsel, The Law Offices of Avrum J. Rose, PLLC, Attn: Avrum Rosen, Esq., 38 New Street, Huntington, New York 11743 (b) Proskauer Rose, LLP, Eleven Times Square, New York, New York 10036, Attn: Jeffrey W. Levitan and Adam Berkowitz, and (c) Gregory Messer, Esq., 26 Court Street, Suite 2400, Brooklyn, NY 11242; and (d) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004; (e) the Successful Bidder, and (f) the Backup Bidder, so as to be **actually received by 10:00 a.m. (prevailing Eastern Time) on** _____ (the "**Successful Bidder Objection Deadline**").

12. **Consummation of the Sale**

Following the Sale Hearing, if for any reason the Successful Bidder fails to consummate the purchase, then the Backup Bidder will automatically be deemed to have submitted the highest or otherwise best bid. The Debtor and the Backup Bidder are authorized to effect the sale to the Backup Bidder as soon as is commercially reasonable without further order of the Bankruptcy Court. If such failure to consummate the purchase is the result of a breach by the Successful Bidder, its Deposit shall be forfeited to the Debtor and the Debtor specifically reserve the right to seek all available damages from the defaulting bidder. The Successful Bidder agree to adjourn the closing of the sale to a date after the confirmation of the Debtors plans of reorganization.

13. **Extension of Deadlines and Modification of Bid Procedures**

The Debtor reserve their rights, in the exercise of their fiduciary obligations, to modify the Bid Procedures in their discretion (after consultation with the Secured Creditors); provided, however, that the Purchaser's consent will be required for any modification that modify the terms on which the Break-Up Fee will be paid or the time during which the Purchaser must remain obligated to consummate the Sale as the Backup Bidder.

14. **Jurisdiction**

The Bankruptcy Court shall retain exclusive jurisdiction over any matter or dispute relating to the Sale of the Real Estate, the Bidding Procedures, the Sale Hearing, the Successful Bid, the Backup Bid, and/or any other matter that in any way relates to the foregoing.